

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAVE ESTER NEWMAN,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

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No. 3:20-CV-3733-X-BT

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE
JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. [Doc. No. 19]. Specifically, the Magistrate Judge concluded that Newman’s “Section 2254 petition is untimely and should be dismissed.”¹ Newman raises two objections.

First, Newman concedes that “his petition is out of time” but contends that the Court should nevertheless apply equitable tolling because his prison’s “law library was [] temporarily closed . . . due to the outbreak of . . . Covid-19.”² He also contends that COVID-19’s impact on the court system “violated [his] constitutional rights.”³ But he doesn’t explain how or even identify which of his constitutional rights suffered.

¹ Doc. No. 19 at 9.

² Doc. No. 22 at 5. He also notes that his work schedule made library time difficult.

³ *Id.*

And the Magistrate Judge already rightly rejected that argument, citing numerous courts that have held that “intermittent lockdowns and diminished access to the law library, even as a result of COVID-19 restrictions, do not constitute ‘extraordinary circumstances’ warranting equitable tolling.”⁴ Second, Newman contends that the Court should factor in the time it took for him to “receive the notice of refusal” from the Texas Court of Criminal Appeals.⁵ But the Magistrate Judge already rejected that argument because a conviction becomes final “*ninety days after the highest court’s judgment is entered*”—not after the petitioner *receives* that judgment.⁶ In any event, Newman concedes that, even by his preferred math, his petition was still “a month late.”⁷

Accordingly, the Court reviewed *de novo* those portions of the proposed findings, conclusions, and recommendation to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge. Thus, considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), the Court **DENIES** a certificate of appealability.

⁴ Doc. No. 19 at 7 (cleaned up).

⁵ Doc. No. 22 at 6.

⁶ Doc. No. 19 at 5 n.2 (cleaned up).

⁷ Doc. No. 22 at 8.

IT IS SO ORDERED this 16th day of February, 2023.

A handwritten signature in black ink, appearing to read "Brantley Starr", written over a horizontal line.

BRANTLEY STARR
UNITED STATES DISTRICT JUDGE